

REMARKS***Restriction of Invention:***

In the Restriction Requirement dated May 22, 2009, the Examiner requires election of one of the following inventions:

- I. Claims 1-58, drawn to a surgical instrument.
- II. Claims 59-62, drawn to a surgical method.

The Examiner specifically states:

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The technical feature that both Groups have in common is a distractor including a shaft and a paddle. This technical feature is not special in view of Foley et al. (US Patent 6599291). Foley et al. discloses a distractor (10) including a shaft (16) and paddles (26 and 28) (Figures 1 and 2).

Invention Election:

Applicant elects invention I, claims 1 to 58 without traverse.

Restriction of Species:

The Examiner has further found that the application has claims directed to more than one species of the generic invention. The Examiner specifically states:

The species are as follows:

Distractor				
Species A:	Species B:	Species C:	Species D:	Species E:
Figures 1-8	Figures 9-11	Figures 12-13	Figures 14-17	Figures 18-20
Species F:	Species G:	Species H:	Species I:	Species J:
Figures 21-23	Figures 24-26	Figures 38-39	Figures 40-41	Figures 42-43

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Distractor

Species A: Claims 1-34, 44-62

Species B: Claims 20-34, 44-58

Species C: Claims 20-34, 44-58

Species D: Claims 20-43, 44-58

Species E: Claims 20-43

Species F: Claims 20-43

Species G: Claims 20-43

Species H: Claims 20-34

Species I: Claims 20-34, 44-58

Species J: Claims 20-34, 44-58

The following claim(s) are generic: 20-34

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The technical feature that Species of Distractors have in common is a distractor including a shaft and a paddle. This technical feature is not special in view of Foley et al. (US Patent 6599291). Foley et al. discloses a distractor (10) including a shaft (16) and paddles (26 and 28) (Figures 1 and 2).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

Election of Species:

Applicant elects Species A without traverse. Applicant acquiesces to the Examiner's identification of claims as corresponding and/or generic.

Claims Remaining for Prosecution:

According to the above-elections, claims 1 to 34 and 44 to 58 will be examined, with claims 35 to 43 and 59 to 62 being withdrawn.

CONCLUSION

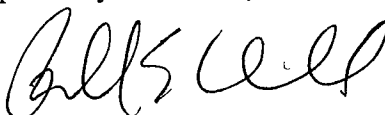
If the Examiner believes that an interview would facilitate the resolution of any outstanding issues, he is kindly requested to contact the undersigned.

In the event that a petition for an extension of time is required to be submitted at this time, Applicant hereby petitions under 37 CFR 1.136(a) for an extension of time for as many months as are required to ensure that the above-identified application does not become abandoned.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 141449, under Order No. 101896-474.

Dated: June 9, 2009

Respectfully submitted,

By 

Ronald E. Cahill

Registration No.: 38,403

NUTTER MCCLENNEN & FISH LLP

World Trade Center West

155 Seaport Boulevard

Boston, Massachusetts 02210-2604

(617) 439-2782

(617) 310-9782 (Fax)

Attorney for Applicant